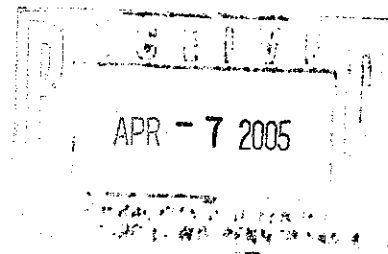


COMMONWEALTH OF PENNSYLVANIA: IN THE COURT OF COMMON PLEAS  
VS : OF ERIE COUNTY, PENNSYLVANIA  
ANTONIO M. TIRADO : CRIMINAL DIVISION  
: No. 379 OF 1999



PLEA

Proceedings held before the Honorable  
William R. Cunningham, in Courtroom D, Erie  
County Courthouse, Erie, Pennsylvania, on Monday,  
May 3, 1999, commencing at 10:08 a.m.

APPEARANCES:

Garrett Taylor, Assistant District Attorney, appearing on  
behalf of the Commonwealth.

James Pitonyak, Assistant Public Defender, appearing on  
behalf of the Defendant.

James M. Muscarella, CM -- Official Court Reporter

COPY

P R O C E E D I N G S

(Whereupon, at 8:55 a.m., the Rights were administered by ADA Taylor en masse.)

MR. TAYLOR: If I could have your attention for a moment. When I call out your name, please indicate your presence for the court reporter.

Christopher Baker?

MR. BAKER: Here.

MR. TAYLOR: Jeffrey Barker?

MR. BARKER: Here.

MR. TAYLOR: Michael Mull? Not present.

Antonio Tirado?

MR. TIRADO: Here.

MR. TAYLOR: Brad Varner?

MR. VARNER: Here.

MR. TAYLOR: Marin Vasile?

MR. VASILE: Here.

MR. TAYLOR: Is that correct, Vasile?

MR. VASILE: (Nods head).

MR. TAYLOR: Antonio Werner?

MR. WERNER: Here.

MR. TAYLOR: Victor Lopez?

MR. LOPEZ: Here.

1 MR. TAYLOR: Bess Brown?

2 MS. BROWN: Here.

3 MR. TAYLOR: Kenneth Henderson?

4 MR. HENDERSON: Here.

5 MR. TAYLOR: Brian Jackula?

6 MR. JACKULA: Here.

7 MR. TAYLOR: And Dennis Murray?

8 MR. MURRAY: Here.

9 MR. TAYLOR: Gentlemen, and, ma'am, my name is  
10 Garrett Taylor. Myself along with Assistant  
11 District Attorney Ken Zak, we will be handling the  
12 proceedings before Judge Cunningham this morning.  
13 For those of you who are here for the purpose of  
14 entering a plea in your case today, there are  
15 certain rights that you are giving up when you enter  
16 that plea, and I'm going to go over those rights  
17 with you at this time.

18 First off, you should be aware when you enter  
19 a plea of guilty what you are doing is admitting the  
20 charge as it's been filed against you and you are  
21 submitting yourself to the jurisdiction of the Court  
22 for sentencing at a later time. The primary right  
23 you are giving up when you enter today's plea is the  
24 right to a trial by jury.

25 Now, the right to a trial by jury includes

1 participating with your attorney to select twelve  
2 members from this community to serve as jurors in  
3 your case. As you are aware, you are presumed  
4 innocent up until the time the Commonwealth can  
5 establish your guilt beyond a reasonable doubt. And  
6 there is no burden upon yourself to present any  
7 defense to the charges whatsoever.

8 Furthermore, in order to find you guilty of  
9 the charges, the jury must unanimously agree twelve  
10 to zero that you are, in fact, guilty of the  
11 charges. But once you enter your pleas here today,  
12 you should be aware that you are forever giving up  
13 that right to a trial by jury as I just explained.

14 Now, during this morning's plea colloquy I'll  
15 call your case up individually before Judge  
16 Cunningham, I will explain to you the legal and  
17 factual basis of the charges against you as well as  
18 the maximum penalties that you are facing with your  
19 plea. Furthermore, if there is a mandatory minimum  
20 sentence that would apply in your case, I will  
21 explain that to you as well.

22 Now, if there is a plea agreement in your  
23 case, you should be aware that Judge Cunningham is  
24 not bound by the terms of that plea agreement unless  
25 he chooses to be bound by the terms of that

1           agreement, and he will announce his decision  
2           following this morning's plea colloquy. If the  
3           Commonwealth has agreed to make a sentencing  
4           recommendation on your behalf such as no objection  
5           to probation, you should be aware that Judge  
6           Cunningham is never bound by the terms of that  
7           sentencing recommendation. If he chooses to reject  
8           it at the time of your sentencing, you do not have  
9           the right to withdraw your plea at that time.

10           Now, finally, as a general rule here in Erie  
11           County, the Judge who takes your plea will also be  
12           the Judge who sentences you at a later time. If for  
13           some reason Judge Cunningham is unavailable due to a  
14           scheduling conflict or illness, your case can be  
15           transferred to another Judge here in the Erie County  
16           system and that would not give you the right to  
17           withdraw your plea at that time.

18           Now, if you have any questions regarding the  
19           rights that you are giving up when you enter today's  
20           plea, you should ask those questions when your case  
21           is called forward and you can either ask your  
22           attorney, myself or Judge Cunningham.

23           MR. TAYLOR: Miss Brown, and, Mr. Lopez, each  
24           of you is here for the purpose of being sentenced.  
25           Mr. Lopez, following this morning's revocation.

1 And, Miss Brown, you are here, having entered a plea  
2 of guilty in your case.

3 Now, there are certain rights that each of you  
4 have following this morning's recommendation --  
5 excuse me, following this sentencing this morning.  
6 First rights you are going to have is the right to  
7 file what is called a post sentencing motion. A  
8 post sentencing motion is a written motion, and  
9 in that you are asking the Judge to grant you some  
10 type of relief.

11 Now, Mr. Lopez, since you are being revoked  
12 from a probation and parole sentence here today, the  
13 post sentencing motions that you can file would  
14 include a challenge to the validity of the  
15 proceedings that bring you before the revocation  
16 court as well as a motion to modify or reconsider  
17 the sentence that's imposed against you.

18 Miss Brown, since you entered a plea of guilty  
19 in your case, you could file post sentencing motions  
20 challenging the validity of your plea of guilty, as  
21 well as a motion to modify or reconsider the  
22 sentence that the Judge imposes.

23 Now, for each of you these motions must be in  
24 writing and they must be consolidated, and you have  
25 to be very specific as to why you believe the relief

1           you are asking for should be granted. Furthermore,  
2           you would have ten days from today's date in which  
3           to file that motion, and it must be filed of record  
4           with the Erie County Clerk of Court's office.

5           Each of you also may appeal the sentence you  
6           receive today to the Superior Court of Pennsylvania.  
7           And if you want to do that, you have to file a  
8           written Notice of Appeal with the Erie County Clerk  
9           of Court's office.

10          Now, there are time limitations you are  
11          working under if you decide to appeal your sentence  
12          after today's proceeding. If you do not file a post  
13          sentencing motion as I have just outlined, you would  
14          have thirty days from today's date in which to file  
15          your Notice of Appeal. If you do file post  
16          sentencing motions, however, your time changes and  
17          you would either have thirty days from the date that  
18          the Judge decides your post sentencing motion, or if  
19          for some reason Judge Cunningham did not decide your  
20          post sentencing motion for a period of one hundred  
21          twenty days, or four months, it is automatically  
22          denied by operation of law and you have thirty days  
23          from that date in which to file that Notice of  
24          Appeal.

25          Each of you is also entitled to be represented

1 by counsel in the filing of any post sentencing  
2 motions as well as any appeal you may decide to  
3 pursue. If you can't afford an attorney and you  
4 meet the eligibility requirements of the Erie County  
5 Public Defender's office, an attorney would be  
6 appointed to represent you free of charge during the  
7 course of both those proceedings.

8 If you have any questions following your  
9 sentencing today or the revocation, feel free to ask  
10 your attorney, myself or the Judge when your case is  
11 called forward.

12  
13 (Whereupon, all the defendants were placed  
14 under oath en masse.)

15  
16 (Whereupon, at 9:00 a.m., the Rights were  
17 concluded, and at 10:08 a.m., the Plea Colloquy of  
18 Antonio Tirado commenced.)

19  
20 MR. TAYLOR: Mr. Tirado.

21 MR. PITONYAK: Morning, Your Honor.

22 THE COURT: Morning, Mr. Pitonyak.

23 MR. TAYLOR: Your Honor, the next matter  
24 before the Court is the plea of Antonio Tirado at  
25 Docket Number 379 of 1999.



1           Mr. Tirado, you were in court a short time ago  
2           when I explained to you the rights that you give up  
3           when you enter today's plea, is that correct?

4           MR. TIRADO: Yes.

5           MR. TAYLOR: Do you understand those rights?

6           MR. TIRADO: Yes.

7           MR. TAYLOR: Do you have any questions?

8           MR. TIRADO: No.

9           MR. TAYLOR: This is the "Defendant's  
10          Statement of Understanding of Rights Prior to a  
11          Guilty Plea." It outlines the rights that you are  
12          giving up. It also provides the maximum penalties  
13          you are facing with your plea. And at count two you  
14          face a fifteen thousand dollar fine and five years  
15          of incarceration. At count three you face  
16          twenty-five hundred dollars in fines and up to one  
17          year of incarceration. And the Judge could impose  
18          that penalty consecutively against you, and that  
19          would expose you to six years of incarceration and  
20          up to seventeen thousand five hundred dollars in  
21          fines.

22          Paragraph five indicates you are pleading  
23          guilty to count two. You are also pleading guilty  
24          to count three as a disorderly conduct as an M3.  
25          The Commonwealth has also agreed to nolle pros

1 counts one and four with costs on yourself. Is that  
2 your understanding of your plea?

3 MR. TIRADO: Yes, sir.

4 MR. TAYLOR: Do you have any questions?

5 MR. TIRADO: No, sir.

6 THE COURT: Mr. Tirado, this is the Criminal  
7 Information that's been filed in your case. It's  
8 alleged that on or about December 24th of 1998, at  
9 count two, you committed the offense of possession  
10 with intent to deliver as a felony when you did  
11 unlawfully, feloniously and knowingly, with the  
12 intent to deliver, possess marijuana, that being a  
13 Schedule I Substance. This occurring at the 2500  
14 Block of Myrtle Street here in the City of Erie, and  
15 at that time you were not licensed or registered as  
16 is required by the Acts of Assembly of this  
17 Commonwealth.

18 Do you understand the legal and factual basis  
19 at count two?

20 MR. TIRADO: Yes, I do.

21 MR. TAYLOR: And how do you plead?

22 MR. TIRADO: Guilty.

23 MR. TAYLOR: Count three it's alleged -- Your  
24 Honor, with the Court's permission, I'm going to go  
25 ahead and amend that to disorderly conduct.

1 THE COURT: That's fine.

2 MR. TAYLOR: Mr. Tirado, it's alleged that on  
3 or about that same date, that being December 24th of  
4 1998, you committed the offense of disorderly  
5 conduct as a misdemeanor of the third degree when  
6 you did, with the intent to cause public  
7 inconvenience, annoyance or alarm, engage in  
8 fighting or threatening behavior after being told,  
9 after being warned to desist in that conduct.  
10 Specifically, it's alleged on or about that date you  
11 did resist a lawful arrest of Officer John Popovic,  
12 that occurring in the 2500 Block of Myrtle Street  
13 here in the City of Erie. Do you understand the  
14 legal and factual basis in support of that charge?

15 MR. TIRADO: Yes, I do.

16 MR. TAYLOR: How do you plead?

17 MR. TIRADO: Guilty.

18 MR. TAYLOR: Your Honor, permission to nolle  
19 pros counts one and four?

20 THE COURT: Granted.

21 MR. TAYLOR: Sir, if it's your intent to plead  
22 guilty to the charges I've outlined, please sign  
23 where it says defendant.

24 (Defendant complies.)

25 THE COURT: Mr. Tirado, you understand what

1           you are doing here today?

2           MR. TIRADO: Yes, sir.

3           THE COURT: Do you understand everything  
4           that's been explained to you?

5           MR. TIRADO: Yes, sir.

6           THE COURT: Do you understand these rights  
7           that are set forth on this document, this Statement  
8           of Understanding of the Rights?

9           MR. TIRADO: Yes, sir.

10          THE COURT: And you can read, write and  
11          understand the English language?

12          MR. TIRADO: Yes, I can.

13          THE COURT: And you read this document?

14          MR. TIRADO: Yes, sir.

15          THE COURT: And you reviewed it with your  
16          counsel?

17          MR. TIRADO: Yes, sir.

18          THE COURT: And it sets forth the terms of the  
19          plea, the terms of your plea to count two and to  
20          count three. You understand that?

21          MR. TIRADO: Yes, sir.

22          THE COURT: And the Commonwealth is  
23          withdrawing a number of other charges and amending  
24          count three. You understand that?

25          MR. TIRADO: Yes, sir.

1 THE COURT: Has there been any other promises  
2 that has led you to a plea here today?

3 MR. TIRADO: Excuse me?

4 THE COURT: Has anyone made you any other  
5 promises other than what's set forth on this  
6 document here?

7 MR. TIRADO: Oh, no. No, sir.

8 THE COURT: That led to your plea here today?

9 MR. TIRADO: No, sir.

10 THE COURT: You understand the possible  
11 maximum sentence that you face?

12 MR. TIRADO: Yes, sir.

13 THE COURT: Do you understand these offenses?

14 MR. TIRADO: Yes, I do.

15 THE COURT: All right. Do you understand the  
16 legal basis for them?

17 MR. TIRADO: Yes, I do.

18 THE COURT: Do you understand the factual  
19 basis for them?

20 MR. TIRADO: Yes, sir, I do.

21 THE COURT: Did you commit these offenses?

22 MR. TIRADO: Yes, I did, sir.

23 THE COURT: Is that why you are entering your  
24 plea here today?

25 MR. TIRADO: Yes, sir.

1 THE COURT: You are pleading guilty of your  
2 own free will?

3 MR. TIRADO: Yes, sir.

4 THE COURT: Are you under the influence of any  
5 medication or any substance that affects your  
6 ability to know what you are doing here today?

7 MR. PITONYAK: Are you taking any medicine  
8 today?

9 MR. TIRADO: No, sir.

10 THE COURT: You understand what you are doing  
11 here today?

12 MR. TIRADO: Yes, sir, I'm pleading.

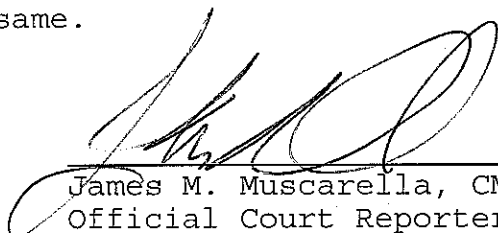
13 THE COURT: I'll accept the plea and set the  
14 sentencing for June 15th at 8:45.

15 MR. PITONYAK: Okay. Thank you, Your Honor.

16  
17 (Whereupon, at 10:13 a.m., the proceedings  
18 were concluded.)  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

  
James M. Muscarella, CM  
Official Court Reporter

The foregoing record of the proceedings of the above cause is hereby approved, and directed to be filed.

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Hon. William R. Cunningham